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MISSOULA, MT  
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PATRICK E. DUFFY  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

THE LIVING EARTH, INC.,	)	CV 04-97-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
TRANSDIGITAL COMMUNICATIONS CORP.,	)	
	)	
Defendant.	)	
_____	)	

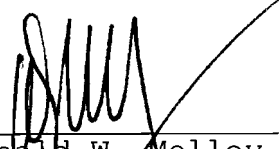
United States Magistrate Judge Leif B. Erickson entered Findings and Recommendation in this matter on December 13, 2004. Plaintiff did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1) (2000). This Court will review the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427

(9th Cir. 2000).

Pursuant to Fed. R. Civ. P. 4(m), Judge Erickson ordered Plaintiff to either complete return of service upon Defendant by November 12, 2004 or show good cause why service was not completed. Plaintiff failed to respond to Judge Erickson's order. Plaintiff filed the complaint on June 1, 2004 and failed to perform service of the summons and complaint by Judge Erickson's November 12, 2004 deadline, well in excess of the 120 days allotted by Rule 4(m).

Based on the foregoing, IT IS HEREBY ORDERED that Judge Erickson's Findings and Recommendation (dkt #8) are adopted in full. Defendant Transdigital Communications Corporation is DISMISSED WITHOUT PREJUDICE.

DATED this 15 day of April, 2006.

  
\_\_\_\_\_  
Donald W. Molloy, Chief Judge  
United States District Court

